

Before the  
Administrative Hearing Commission  
State of Missouri



ELAINA BENTRUP,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 14-0457 BN
	)	
MISSOURI STATE BOARD OF NURSING,	)	
	)	
Respondent.	)	

**DECISION**

We dismiss Elaina Bentrup’s complaint for lack of jurisdiction.

**Procedure**

The Missouri State Board of Nursing (“the Board”) denied Bentrup’s application for a license. On April 14, 2014, Bentrup filed a complaint appealing the denial. On May 15, 2014, the Board filed a motion to dismiss, stating that Bentrup filed the complaint too late. We gave Bentrup until May 30, 2014 to respond to the motion. Bentrup requested an extension of time to respond to the motion. We granted her request by order issued on June 10, 2014, and on June 25, 2014, Bentrup filed a response.

**Findings of Fact**

1. Bentrup applied for a registered professional nursing license.
2. The Board denied Bentrup’s application.
3. On February 24, 2014, the Board sent Bentrup notice of its decision by certified mail, return receipt requested. The decision letter contained the following language:

If you wish to contest the Board's decision, you must file a written complaint with the Administrative Hearing Commission within thirty (30) days of delivery or mailing of this letter and Order by certified mail. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building Rm. 604, Jefferson City, MO 64102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board's decision shall be considered as waived.<sup>[1]</sup>

4. Bentrup received and signed for the notice on March 1, 2014.
5. On April 14, 2014 we received Bentrup's complaint by fax. Bentrup incorrectly sent her complaint to the Board. The Board, in turn, faxed the complaint to us.
6. The 30<sup>th</sup> day after February 24, 2014 was March 26, 2014. March 26, 2014 was not a Saturday, Sunday, or a legal holiday.

### **Conclusions of Law**

We have no jurisdiction to hear a petition filed out of time.<sup>2</sup> If we have no jurisdiction to hear the petition, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>3</sup> The filing deadline is determined by the date of mailing or delivery, whichever occurs sooner.<sup>4</sup>

The Board argues that we do not have jurisdiction to hear Bentrup's complaint because she did not file it within the time period set by § 621.120:<sup>5</sup>

Upon refusal by any agency listed in section 621.045 to permit an applicant to be examined upon his qualifications for licensure or upon refusal of such agency to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination, such applicant may file, **within thirty days after the delivery or mailing by certified mail of written notice of such refusal to the**

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<sup>1</sup> Exhibit A to the motion to dismiss.

<sup>2</sup> *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc), *cert. denied*, 488 U.S. 893 (1988).

<sup>3</sup> *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

<sup>4</sup> *R.B. Industries v. Goldberg*, 601 S.W.2d 5, 7 (Mo. banc 1980).

<sup>5</sup> Statutory references are to the 2000 Revised Statutes of Missouri.

**applicant, a complaint with the administrative hearing commission.**

(Emphasis added.)

Failure to comply with the statutory time limitations for appeal from an administrative agency decision results in the lapse of subject matter jurisdiction and the loss of right of appeal.<sup>6</sup>

We cannot decide claims filed outside the statutory time limit.<sup>7</sup>

We determine the date that Bentrup filed her complaint according to § 621.205, which provides:

1. For the purpose of determining whether documents are filed within the time allowed by law, documents transmitted to the administrative hearing commission by registered mail or certified mail shall be deemed filed with the administrative hearing commission as of the date shown on the United States post office records of such registration or certification and mailing. **If the document is sent by any method other than registered mail or certified mail, the administrative hearing commission shall deem it to be filed on the date the administrative hearing commission receives it.**

(Emphasis added.) 1 CSR 15-3.290 also provides:

(1) A party may file a document by—

\* \* \*

(B) Electronic Facsimile Transmission (Fax). **A document filed by fax is deemed filed at the time the commission receives a fax of the document.** If a document arrives by fax after 5:00 p.m. and before 12:00 midnight or on a Saturday, Sunday or legal holiday, it is filed on the commission's next business day, unless the commission orders otherwise[.]

(Emphasis added.)

In her response to the motion to dismiss, Bentrup argues that she timely filed the complaint because she mailed it “overnight via Fed Ex to Angela Morice within the 30 day

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<sup>6</sup> *Daly v. Warner-Jenkison Mfg. Co.*, 92 S.W.3d 319, 322-23 (Mo. App., E.D. 2002) (citing *Fayette No. 1, Inc. v. Missouri Dep't of Soc. Servs.*, 853 S.W.2d 393, 396 (Mo. App., W.D. 1992)).

<sup>7</sup> *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1983).

deadline.” But she did not mail the complaint to this Commission, as instructed in the decision letter and required by statute. Bentrup asks why she was granted a hearing if the complaint was filed too late. This Commission does not address the issue of jurisdiction when a case is opened, but in response to a motion to dismiss or other indication that we lack jurisdiction.

Bentrup filed her complaint on April 14, 2014 because that is when we received it by fax. April 14, 2014 was more than 30 days after February 24, 2014. Therefore, Bentrup filed the complaint beyond the time allowed to appeal.

Bentrup asks us to waive this deadline, but we cannot. When Bentrup asked for more time to respond to the motion to dismiss, we had the discretion to grant that request and we did so. The 30-day deadline for filing the complaint is set by statute, and we do not have the discretion to waive it. Because § 621.120 makes no provision for late filing and does not recognize any exceptions for filing out of time, our only recourse is to dismiss Bentrup’s appeal.<sup>8</sup>

### **Summary**

We have no jurisdiction to rule on Bentrup’s complaint because she filed it beyond the 30 days allowed by § 621.120. We grant the Board’s motion to dismiss and cancel the hearing.

SO ORDERED on July 15, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>8</sup>*Thomas v. St. Martin’s Childcare Center*, 127 S.W.3d 704 (Mo. App., E.D. 2004).